

## Frequently Asked Questions about Build America, Buy America Act

The following addresses questions relating to the U.S. National Science Foundation's implementation of the "Infrastructure Investment and Jobs Act" (IIJA) and the "Build America, Buy America Act" (BABA). NSF will continue to update questions and answers as needed.

### Q: What are the Build America, Buy America provisions?

A: The Build America, Buy America provisions of the "Infrastructure Investment and Jobs Act" ensure that federal infrastructure programs must use materials produced in the United States, increase the requirement for American-made content, and strengthen the waiver process associated with these provisions.

### Q: Why was the "Build America, Buy America Act" created?

A: The purpose of the act is to create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs it supports throughout product supply chains.

### Q: Do the Build America, Buy America provisions apply to all projects funded by NSF?

A: The Build America, Buy America provisions apply to all new NSF-funded financial assistance awards or ongoing awards that receive additional funding after May 14, 2022 that involve the construction, alteration, maintenance or repair of infrastructure in the United States.

### Q: How do I know if my project falls into the definition of "infrastructure"?

A: See the Office of Management and Budget's ***Memorandum M-22-11: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure***. Based on that guidance, the term infrastructure includes, at a minimum, the structures, facilities and equipment in the United States for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

For example, research facilities, labs, buildings, are considered infrastructure. NSF is talking a broad view of the infrastructure definition in the Act and M-22-11, so ships, antennas on wheels or tracks or a mobile research laboratory would be covered by the Build America, Buy America provisions even though they are not buildings or real property. Recipients should consult with their Program Officer or Grants and Agreement Officer when there are questions on applicability.

**Q: Do the Build America, Buy America provisions apply to NSF-funded infrastructure projects in other countries?**

A: No; Build America, Buy America only applies to infrastructure projects located in the United States.

For example, the Daniel K. Inouye Solar Telescope located in Hawaii, would have to comply with Build America, Buy America. In contrast, the Rubin Observatory would not have to comply with Build America, Buy America because the construction site is not in the United States.

**Q: Do the Build America, Buy America provisions apply to current active awards where funds have already been obligated?**

A: If you currently have an active NSF award which receives new funding on or after May 14, 2022, and involves the purchase of goods, products and materials for any form of construction, alteration, maintenance or repair of infrastructure in the United States, then this provision applies to all future purchases. If you have an awarded contract under an NSF financial assistance award in place prior to May 14, 2022, for such goods, products and materials, the provisions do not apply.

**Q: Do the Build America, Buy America provisions apply to all goods and services?**

A: No. The Build America, Buy America provisions apply to:

1. Iron and steel used in an infrastructure project in the United States.
2. All manufactured products used in an infrastructure project in the United States.
3. All construction materials used in an infrastructure project that are manufactured in the United States.

Products that do not fit the definition of manufactured goods or construction materials are not covered. For example, a cleaning crew contracted to clear a site for better drainage on a construction site would not be covered by the Build America, Buy America provisions because (1) the work is not using any of the required materials and (2) is providing a service.

**Q: Do the Build America, Buy America provisions apply to a Federal Acquisition Regulations-based contract awarded by NSF?**

A: No. The Build America, Buy America provisions only apply to financial assistance awards. Contact your NSF contracting officer for questions concerning compliance with existing “Buy American Act” requirements.

**Q: Do the Build America, Buy America provisions apply to equipment used for the purposes of construction?**

A: No. The requirements do not apply to tools, equipment and supplies brought to a construction site and removed at or before the completion of the project, as they are temporary in nature. The requirements also do not apply to portable equipment and furnishings used at or within the finished infrastructure project, but which are not an integral part of the structure or otherwise affixed to the project, such as movable chairs, desks and portable computer equipment.

For example, a crane used to lift items, or the hammers and scaffolding used on a construction site would not be considered covered by the Build America, Buy America provisions because they are not incorporated into the building or public work.

**Q: What is a “manufactured product”?**

A: The provisions require that all manufactured products used in an infrastructure project are manufactured in the United States. The cost of a product’s components that were mined, produced, or manufactured in the United States must also be greater than 55% of the total cost of the product’s components, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

For example, the concrete on a construction site would be considered a manufactured product covered by the Build America, Buy America provisions because it is incorporated into the building or public work. Similarly, a “smart” thermostat that is brought to the site for incorporation into a building would be covered by the Build America, Buy America provisions. The individual parts that go into the thermostat, however, would be considered components or subcomponents and would not be subject to the Build America, Buy America provisions.

By contrast, an energy-efficient desktop computer monitor does not become a permanent fixture of the building, and therefore is not “incorporated into” the building. As a result, the monitor does not fit the definition of a “manufactured product” and is not covered by the Build America, Buy America provisions.

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**Q: Does scientific instrumentation count as a manufactured product?**

A: No; since most scientific instrumentation on NSF-funded projects is considered outfitting of the facility and not integral to its construction — much like tables and chairs or other standard laboratory equipment — the Build America, Buy America provisions would not apply. Careful consideration should be given to the interfaces between scientific instrumentation and the base facility. Recipients should consult with their Program Officer or Grants and Agreement Officer when there are questions on applicability.

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**Q: How do you determine what constitutes a “Domestic Content Procurement Preference”?**

A: Per the Office of Management and Budget’s *Memorandum M-22-11: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*, a domestic content procurement preference means the following:

1. All iron and steel used in the project are produced in the United States.
2. The manufactured products used in the project are produced in the United States.
3. The construction materials used in the project are produced in the United States

For example, aluminum, copper, and lead used in a project are considered construction materials because they are non-ferrous metals and are incorporated into the building or public work. Similarly, prefabricated windows brought to a site for incorporation into a building would be covered by the Build America, Buy America provisions as they are construction materials made of glass, plastic, wood and metals.

**Q: Is any change to NSF-funded infrastructure considered construction, alteration, maintenance or repair and would it therefore trigger the Build America, Buy America provisions? Or are minor changes that typically would not be considered a construction activity be excluded? If the latter is the case, what is the threshold?**

**A:** Yes, any construction, alteration, maintenance or repair of infrastructure with NSF financial assistance funding is subject to the Build America, Buy America requirements, unless an exemption applies, and a waiver is granted. There is no threshold.

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**Q: How do you determine what constitutes a “project”?**

**A:** A project is defined as the construction, alteration, maintenance or repair of infrastructure in the United States. This includes the maintenance of a building, laboratory or facility that uses NSF funds, the repair or alteration of any infrastructure using any of the materials listed in the requirements, and any construction that would be covered by the Build America, Buy America provisions.

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**Q: How do you determine what constitutes “Construction Materials”?**

**A:** Any article, material or supply — other than an item that is considered a manufactured product; that is primarily iron or steel; or that includes cement and cementitious materials, aggregates such as stone, sand or gravel, or aggregate binding agents or additives — that primarily consists of any of the following:

- Non-ferrous metals.
  - Plastic and polymer-based products, including polyvinylchloride, composite building materials, and polymers used in fiber optic cables.
  - Glass, including optic glass.
  - Lumber.
  - Drywall.
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**Q: My organization received financial assistance from NSF, and I have Build America, Buy America questions; who can I talk to?**

**A:** You can send questions to your cognizant Program Officer and Grants and Agreements Officer.

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**Q: Are there exceptions to the Build America, Buy America restrictions?**

**A:** In certain circumstances, exceptions to the Build America, Buy America provisions may be approved by NSF following submission of an appropriate waiver request. The three exception categories are:

1. **Public interest:** Applying the domestic content procurement preference would be inconsistent with the public interest.
  2. **Nonavailability:** The types of iron, steel, manufactured products or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.
  3. **Unreasonable cost:** The inclusion of iron, steel, manufactured products or construction materials produced in the United States will increase the cost of the overall project by more than 25%.
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**Q: I need to procure a manufactured good for an NSF funded project but cannot find a domestic manufacturer. What should I do?**

A: You can send questions to your cognizant Program Officer and Grants and Agreements Officer. You may apply for a waiver, based on domestic nonavailability. Follow the instructions on the [\*NSF Build America, Buy America website\*](#).

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**Q: I need to procure a manufactured good for an NSF-funded project, but the cost is above what was originally budgeted. What should I do?**

A: You may apply for a waiver if the cost increase for the overall project is greater than 25%. This is not the same as the cost of the manufactured good increasing over 25%, as it may be a very small part of the total project cost. If a waiver is not granted, NSF has mechanisms in place for handling cost increases on awards. You should consult with your Program Officer on the appropriate mechanism for addressing any cost increases. After May 14, 2022, NSF recipients should begin estimating future budgets with Build America, Buy America requirements in mind.

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**Q: How do I apply for a waiver based on domestic nonavailability or unreasonable cost?**

A: Please refer to the Guidance on Submission of an NSF Waiver Request guidance document on the [\*NSF Build America, Buy America webpage\*](#) for step-by-step instructions. Please fill out the required information in a thorough and complete manner. All waiver requests should be coordinated with your cognizant Program Officer and Grants and Agreements Officer and submitted via email.

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**Q: What is the process for issuing domestic nonavailability waivers?**

A: Once you submit a waiver request to NSF, your cognizant Program Officer and Grants and Agreements Officer initiates a formal review of the request. NSF will post the waiver request on the NSF website for 15 days for public comments. NSF will then submit the agency's decision to the Office of Management and Budget's, Made in America Office to make a final determination. The NSF website will be updated, and you will be notified of the decision.

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**Q: Where will NSF post any nonavailability waivers?**

A: The complete list of waivers is available on the [\*NSF Waiver Requests webpage\*](#).

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**Q: For an unreasonable cost waiver of the Build America, Buy America provisions, is the cost increase threshold 25% of the specific product in question or of the entire project?**

A: Under Build America, Buy America, using domestic products must increase the cost of the total project by 25% to be eligible for a waiver.

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**Q: I am not sure if a product was made in America. What should I do to verify the manufacturing origins?**

A: You should contact the product's manufacturer, distributors and suppliers to determine the country of origin. Trade associations may also be a good source of information. For further assistance, refer to the *Office of Management and Budget's guidance* on how to document compliance with the Build America, Buy America provisions.

**Q: A foreign company opens a manufacturing plant in the United States. The components and subcomponents of the manufactured good come from all over the world. Would these be Build America, Buy America compliant?**

A: Possibly. For a manufactured product to be compliant, it must be manufactured in the United States and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States must be greater than 55% of the total cost of all components of the manufactured product.

**Q: A company imports a manufactured good from abroad, repackages it at their facility in the U.S., and sells it under a U.S. brand name. Is this product compliant with the Build America, Buy America provisions?**

A: No. The iron, steel or manufactured goods must be produced or manufactured in the United States. A simple repackaging or a basic assembly does not pass the test of substantial transformation and satisfy the definition of "manufacturing."

**Q: A recipient wants to purchase equipment for a lab retrofit that is manufactured abroad by a prominent U.S. company and sold by a local foreign distributor using funds from an NSF award. Would this be compliant with the Build America, Buy America provisions?**

A: No. The products must be manufactured in the United States.

**Q: If domestically available manufactured goods are substantially less energy efficient than foreign goods (such as glass), could a subrecipient seek a nonavailability waiver based on the substandard quality of the U.S.-made good?**

A: A waiver request may be submitted for a manufactured good that is not available in sufficient and reasonably available commercial quantities of a satisfactory quality. If you believe that a domestically available manufactured good is not of a satisfactory quality, you may decide to file a nonavailability waiver request.

**Q: Who is responsible for determining whether a product is subject to the Build America, Buy America provisions?**

A: The recipient is responsible. To assist in making these determinations, the Office of Management and Budget has issued *Memorandum M-22-11: Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure*.

**Q: How do recipients document compliance with Build America, Buy America?**

A: NSF has issued guidance to help with determining and documenting compliance with the Build America, Buy America provisions, in the NSF's Implementation of the Act guidance document on the *NSF Build America, Buy America webpage*.

**Q: How do recipients ensure that their subrecipients, subcontracts and vendors comply with the Build America, Buy America provisions?**

A: The Build America, Buy America term and condition applicable to NSF-funded projects requires that the financial assistance recipient flow down the term and condition in any subaward or subcontract. Financial assistance recipients, sub-recipients and contractors must comply with the Build America, Buy America term and condition, and should take whatever measures they deem necessary to ensure that the Build America, Buy America requirements are adhered to by their respective vendors.

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**Q: What is the consequence of not complying with the Build America, Buy America provisions?**

A: Noncompliance with the Build America, Buy America provisions constitutes a violation of the terms and conditions of your financial assistance agreement. Corrective action for a violation may include removing and replacing the improperly purchased foreign-manufactured goods, reducing the amount of the award, or even withholding future funds and terminating the award. In cases of fraud, it can lead to criminal investigation and prosecution.

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**Q: How do recipients ensure that a product is manufactured in the United States?**

A: NSF recipients should include the Build America, Buy America requirements in all solicitations, requests for proposals, agreements and sub-agreements. Recipients should expect contractors and vendors to verify their compliance with the Build America, Buy America provisions.

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**Q: How are the Build America, Buy America Act requirements applied to multinational projects where NSF is a partner with other international organizations?**

A: Only the NSF-funded scope is subject to the Build America, Buy America provisions.

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**Q: How does this apply to software packages or cyberinfrastructure for facilities?**

A: Software is not considered a manufactured product. However, components of a cyberinfrastructure backbone, such as hardware, fiberoptics and cabling, would fall under the Build America, Buy America provisions.

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**Q: Is the purchase of semiconductors and chips considered constructed materials?**

A: Semiconductors and chips would not be considered constructed materials under the Build America, Buy America definitions.

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